

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

BOXOUT LLC

Plaintiff,

v.

SVELTE BRANDS LLC dba Apothecarie
New York

Defendant.

CASE NO. 23-5568

COMPLAINT

JURY DEMAND

Plaintiff Boxout LLC (fka WBC Group, LLC, “Plaintiff” or “Boxout”), by and through undersigned counsel, files this complaint against defendant Svelte Brands LLC dba Apothecarie New York (“Svelte” or “Defendant”), alleging as follows:

1. This is a complaint for breach of contract, or alternatively breach of implied contract, unjust enrichment, and goods sold and delivered, against Svelte arising from that party’s formation of a number of agreements for the sale and purchase of medical and dermatological goods with Plaintiff.

2. After placing purchase orders for dermatological goods, and after Plaintiff having fully performed on those orders by producing and delivering the goods (the “Goods”), Svelte failed to pay.

3. Svelte received the Goods and benefited from the use and/or resale of the Goods, without having compensated Plaintiff for the value of the Goods.

I. THE PARTIES

4. Plaintiff Boxout is a limited liability company duly formed under the laws of the State of Ohio with a principal place of business in Ohio. None of its members, or its members’ members, are citizens of the State of New York.

5. Upon information and belief, Defendant Svelte is a limited liability company duly formed under the laws of the State of New York with a principal place of business in New Jersey, which sometimes conducts business under the name Apothecarie New York or Apothecarie.com. On information and belief, none of its members, or its members' members, are citizens of the State of Ohio.

II. JURISDICTION AND VENUE

6. This Court has original subject matter jurisdiction under 18 U.S.C. § 1332 in that this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff is an Ohio limited liability company headquartered in Ohio, with none of its members being citizens of New York. Defendant Svelte is a New York limited liability company headquartered in the State of New Jersey. On information and belief, none of Svelte's members are citizens of Ohio. Pursuant to 28 U.S.C. § 1332(a)(1), there exists complete diversity of citizenship of the parties. There are no other parties to the case whose citizenship is at issue under 28 U.S.C. § 1332.

7. This Court has personal jurisdiction over Svelte because it was formed under the laws of the State of New York.

8. This Court is a proper venue pursuant to 28 U.S.C. § 1291(b)(1), because Svelte maintains or maintained an address in this judicial district, and pursuant to 28 U.S.C. § 1291(b)(2), because a substantial part of the events or omissions giving rise to this action took place in this judicial district.

III. STATEMENT OF FACTS

9. Plaintiff is primarily in the business of logistics and the wholesale distribution of medical and dermatological products to buyers around the United States.

10. Defendant Svelte is, on information and belief, a New York and New Jersey based retailer, hair salon, and “skin spa.”

11. Throughout 2022, Svelte ordered dermatological products from Plaintiff, all of which were shipped and delivered to Svelte.

12. Among the purchase orders, Svelte ordered \$327,040.24 in goods that it never paid for (the “Goods”).

13. Following receipt of the purchase orders, Plaintiff delivered the Goods, issuing the respective invoices (the “Invoices,” copies of which are included here as **Exhibit A**).

14. Details of the unpaid Invoices are as follows:

Transaction	Transaction Date	Remaining Amount	Purchase Order	Sales Order	Class
7306768	29-Mar-22	\$ 1,430.80	10991	12252724444	Invoice
7829625	14-Jul-22	\$ 34,415.22	12355	12361836064	Invoice
7856236	20-Jul-22	\$ 29,911.80	12441	12369881114	Invoice
7898572	29-Jul-22	\$ 47,329.50	12506	12378618844	Invoice
7917796	2-Aug-22	\$ 147.00	12506	12378618844	Invoice
7923941	3-Aug-22	\$ 1,209.60	11241	12386246818	Invoice
7923940	3-Aug-22	\$ 2,116.80	11731	12386246938	Invoice
7925748	3-Aug-22	\$ 1,965.60	11802	12386247051	Invoice
7953842	9-Aug-22	\$ 903.00	12664	12393025764	Invoice
7967022	12-Aug-22	\$ 33,909.60	12667	12394278474	Invoice
8000341	19-Aug-22	\$ 30,080.16	12734	12401533864	Invoice
8039191	26-Aug-22	\$ 23,758.86	12796	12409416724	Invoice
8071319	2-Sep-22	\$ 33,554.76	12874	12418498504	Invoice
8093518	7-Sep-22	\$ 1,008.00	12932	12424179144	Invoice
8104860	9-Sep-22	\$ 42,710.04	12917	12423618204	Invoice
8135044	16-Sep-22	\$ 15.05	13008	12433902194	Invoice
8149449	19-Sep-22	\$ 42,792.85	13008	12433902194	Invoice
		\$			Credit
8441329	15-Nov-22	(218.40)	12441	12447458611	Memo
TOTAL		\$ 327,040.24			

15. The Goods were sold to Svelte on credit, for payment within 60 days of the issuance of the respective invoices (“60 NET” terms).

16. To date, Svelte has not paid for the Goods and Plaintiff has not otherwise received payment for the Goods.

17. Due to Defendant's actions, Plaintiff was damaged in an amount not less than \$327,040.24.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION BREACH OF CONTRACT

18. Plaintiff incorporates herein all the preceding allegations as though fully set forth herein.

19. Beginning in 2018, Plaintiff and Defendant entered into a series of written sales agreements, followed by Plaintiff's acceptance and full performance of those agreements.

20. The parties intended to create, and did create, binding written contracts through those written agreements, and each knew or should have known that its behavior would be interpreted by the other party as an agreement.

21. With respect to the Goods, the Plaintiff has performed all of its obligations under Defendant's respective purchase orders except for those that have been prevented, delayed, or excused by the acts or omissions of Defendant.

22. While Plaintiff has performed all of its obligations under the agreements, Svelte has failed to perform its payment obligations and currently owes Plaintiff \$327,040.24.

23. Because of Svelte's continuous and ongoing failure to perform their obligations to pay for the Goods, Plaintiff was damaged in an amount to be proven at trial but not less than \$327,040.24.

**SECOND CAUSE OF ACTION
BREACH OF IMPLIED CONTRACT**

24. Plaintiff incorporates herein all the preceding allegations as though fully set forth herein.

25. Plaintiff pleads this second cause of action in the alternative.

26. Beginning in or about 2022, Plaintiff and Defendant entered into a series of verbal agreements or tacit understandings, followed by Plaintiff's acceptance and full performance.

27. These parties created binding implied contracts through the verbal agreements and actions, and each knew or should have known that its behavior would be interpreted by the other party as an agreement.

28. While Plaintiff has performed all of its obligations under the agreements, Svelte has failed to perform its payment obligation and currently owes Plaintiff \$327,040.24.

29. Because of defendant Svelte's continuous and ongoing failure to perform its obligations to pay for the Goods, Plaintiff has been damaged in an amount to be proven at trial but not less than \$327,040.24.

**THIRD CAUSE OF ACTION
UNJUST ENRICHMENT**

30. Plaintiff incorporates herein all the preceding allegations as though fully set forth herein.

31. Plaintiff pleads this third cause of action in the alternative to the first two causes of action.

32. Svelte unjustly received the benefit of the value of the Goods that were delivered by Plaintiff, but did not pay any consideration to Plaintiff for those Goods.

33. As a consequence of Svelte's actions, Plaintiff was deprived of possession of the Goods and suffered damages in an amount to be proven at trial but not less than \$327,040.24.

**FOURTH CAUSE OF ACTION
GOODS SOLD AND DELIVERED**

34. Plaintiff incorporates herein all the preceding allegations as though fully set forth herein.

35. Plaintiff pleads this third cause of action in the alternative to the first three causes of action.

36. Plaintiff shipped the Goods.

37. Svelte received the Goods.

38. Svelte had an opportunity to inspect the Goods in its possession, but never formally rejected the Goods.

39. Under New York law, Plaintiff is entitled to recover the price of the Goods from Svelte, which is an amount not less than \$327,040.24.

V. JURY DEMAND

40. Plaintiff demands a jury trial on all issues that may be tried before a jury in this matter.

VI. PRAYER

WHEREFORE, Plaintiff prays for judgment against Svelte for an award of damages in an amount to be proven at trial but not less than \$327,040.24, as well as prejudgment interest and costs, and for such other and further relief as the Court may deem just, equitable or proper.

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DATED this 24th day of July 2023

Respectfully submitted,

SARACHEK LAW FIRM

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